

NORTHWEST ENVIRONMENTAL ADVOCATES



June 22, 2015

FOIA Officer
National Oceanic and Atmospheric Administration
Public Reference Facility (SOU1000)
1315 East-West Highway (SSMC3)
Room 9719
Silver Spring, Maryland 20910

Filed Via FOIA Online

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, *et seq.*, we are writing to request the disclosure of public documents within the control of your agency. I make this request on behalf of Northwest Environmental Advocates (NWEA). This request is a follow-up to FOIA No. DOC-NOAA-2013-001430, filed by the Washington Forest Law Center on NWEA's behalf on August 19, 2013.

NWEA is a non-profit, 501(c)(3), environmental watchdog organization dedicated to preserving and protecting natural resources in the Pacific Northwest. NWEA works through education, advocacy, and litigation to protect and restore water in Washington, Idaho, and Oregon as well as nationally. The organization has a long history of interest and involvement in environmental issues, in particular seeking to use the Clean Water Act programs to restore and maintain water quality for the protection of human health, fish, and wildlife.

This request pertains to the state of Oregon's Coastal Nonpoint Pollution Control Program that Oregon has been developing pursuant to the Coastal Zone Act Reauthorization Amendments of 1990, 16 U.S.C. § 1544b (CZARA). An earlier, and identical request in content and scope, was sent August 19, 2013 seeking all documents generated or received by NOAA on or after April 7, 2013. Therefore, this request seeks all documents generated or received by NOAA subsequent to August 19, 2013.

NOAA employee Allison Castellan may have or know where to find documents responsive to this request, as may employees of the Portland and Seattle offices of the National Marine Fisheries Service including, possibly, Will Stelle and Kim Kratz.

I. FOIA Request

In answering this request, please consider "documents" to include: reports, memoranda, internal correspondence, including electronic mail or other communications, policy and scientific reports, meeting notes, and summaries of conversations and interviews, computer records, and other forms of written communication, including internal staff memoranda. In your response, please

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identify which documents correspond to which requests below. This request also covers any non-identical duplicates of records that by reason of notation, attachment, or other alteration or supplement include any information not contained in the original record. Additionally, this request is not meant to be exclusive of other records which, though not specifically requested, would have a reasonable relationship to the subject matter of this request.

We emphasize that this request applies to all described documents whose disclosure is not expressly prohibited by law. If you should seek to prevent disclosure of any of the requested records, we request that you: (i) identify each such document with particularity (including title, subject, date, author, recipient, and parties copied), and (ii) explain in full the basis on which non-disclosure is sought. In the event that you determine that any of the requested documents cannot be disclosed in their entirety, we request that you release any reasonably redacted or segregable material that may be separated and released. Furthermore, for any documents, or portions thereof, that are determined to be potentially exempt from disclosure, we request that you exercise your discretion to disclose the materials, absent a finding that sound grounds exist to invoke an exemption.

Pursuant to this request, please provide all documents prepared or utilized by, in the possession of, or routed through NOAA on or after August 19, 2013 related to:

1. The State of Oregon's Coastal Nonpoint Pollution Control Program that Oregon has been developing pursuant to the Coastal Zone Act Reauthorization Amendments of 1990, 16 U.S.C. § 1544b (CZARA).

If there are large documents that you suspect we may already have, please feel free to call us and ask in order to avoid waste and/or delay. If there are any other materials or categories of materials that you do not believe we would find useful, please contact us to discuss a possible narrowing of this request. In addition, please exclude from this request those documents that are available to the public on the NOAA Office of Coastal Management's website including the following:

- Public Comments Received on Proposed Findings
- Oregon's Response to Proposed Findings (3/20/2014)
- Cover Letter for January 30, 2015 Findings Document (1/30/2015)
- Finding that Oregon Has Not Submitted a Fully Approvable Program (1/30/2015)
- Response to Comments on Proposed Finding (1/30/2015)
- Docket for Finding that Oregon Has Not Submitted a Fully Approvable Program (1/30/2015)

See Oregon, Decision Memos for State Programs, Coastal Nonpoint Pollution Control Program, at <http://coast.noaa.gov/czm/pollutioncontrol/?redirect=301ocm#Oregon>.

If you have documents that meet the terms of this request but believe they are not disclosable, please provide a list of such documents and an explanation of any such determination on your part. Also, please indicate if and where you have redacted any information from disclosed documents and/or if you do not have any of the information or documents requested.

II. Fee Waiver Request

Because NWEA is a non-profit, public interest organization, I hereby request a waiver of any fees associated with this request pursuant to 15 C.F.R. § 4.11(l). NOAA has previously granted FOIA fee waivers to NWEA, including for an identical request; I respectfully request that NOAA do so again for this request. Following is a response to the fee waiver requirements set out in 15 C.F.R. § 4.11(l).

The FOIA requires agencies to waive fees associated with a request for information if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. *See* 5 U.S.C. § 552(a)(4)(A)(iii). The fee waiver provisions of FOIA are to be liberally construed and applied. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987). A fee waiver is appropriate here because disclosure of the requested information and documents is in the public interest: it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of NWEA.

First, this request seeks documents and information that directly concern identifiable operations and activities of the federal government. *See* 15 C.F.R. § 4.11(l)(1)(i), (2)(i). The requested documents relate to how the federal government implements CZARA and regulates nonpoint source pollution in coastal areas. For responsive documents or information developed outside of the government, responsive documents likely inform how NOAA is carrying out its regulatory, enforcement, and other activities. Clearly the requested documents and information concern identifiable operations and activities of the federal government.

Second, disclosure of the requested documents and information will contribute to, and significantly further, public understanding by informing a reasonably broad audience of persons interested in the subject. *See* 15 C.F.R. § 4.11(l)(1)(i), (2)(ii). The documents requested by NWEA are not, to the best of our knowledge, already in the public domain and so disclosure will necessarily lead to better understanding of NOAA's regulatory activities. Indeed, with the exception of documents posted to NOAA's website regarding the proposed and final determinations on the Oregon coastal nonpoint program, very little information has been made publicly available regarding NOAA's view of the Coastal Nonpoint Pollution Control Program in Oregon with the exception of the 1998 conditional approval document posted there. Consequently, absent disclosure of these records, the public is left largely to speculate about NOAA's regulatory role and the resulting and/or potentially unregulated environmental impacts. Given the complexity of the legal issues and the scarcity of publicly available information, the public's understanding of government operations will be significantly greater after disclosure of the requested documents. NWEA has explicitly excluded documents from this request that are currently available on NOAA's website.

Indeed, NWEA has the ability and intention to disseminate disclosed documents and information to large segments of the public. NWEA is likely to communicate disclosed information to its members through websites, newsletters, and action alerts. *See* 15 C.F.R. § 4.11(l)(1)(i), (2)(iii), (2)(iv). NWEA communicates regularly with its members, who live and recreate throughout the Northwest. Additionally, NWEA maintains a website through which it regularly communicates information to interested citizens and the public (www.northwestenvironmentaladvocates.org). NWEA intends to review and publicize some of the disclosed information through its

website-the regularly-updated home page, as well as the “document library,” “action alerts,” “programs,” and “getting involved,” elements. NWEA also maintains contacts with interested reporters and keeps them updated on federal government implementation of CZARA with regard to Oregon. Finally NWEA maintains regular communications with other nonprofit organizations interested in water quality, drinking water, logging practices, agricultural practices, recreational and commercial fisheries, and threatened and endangered species.

NWEA has used numerous documents previously disclosed under identically-worded FOIA requests to NOAA and EPA as the basis for letters in which NWEA has summarized for public consumption the views of the various agencies contained in those documents. *See e.g.*, Letters to EPA and NOAA Re: Oregon Coastal Nonpoint Pollution Control Program: EPA and NOAA’s Interim Approval of Agricultural Management Measures for Oregon (May 2, 2012) *available at* http://www.northwestenvironmentaladvocates.org/nweafiles/2012/12/CZARA%20ag_letter_%20201205.pdf; Oregon Coastal Nonpoint Pollution Control Program: EPA and NOAA’s Interim Approval of Agricultural Management Measures for Oregon are Based on a Flawed Understanding of the State’s Enforcement Authority (June 13, 2012) *available at* http://www.northwestenvironmentaladvocates.org/nweafiles/2012/12/CZARA_%20ag_letter_enforce_20120613.pdf; Oregon Coastal Nonpoint Pollution Control Program; EPA’s and NOAA’s Interim Findings on Pesticides (August 20, 2012) *available at* http://www.northwestenvironmentaladvocates.org/nweafiles/2012/12/CZARA_fed_letter_pesticide%20petition_20120820.pdf; Oregon Coastal Nonpoint Pollution Control Program; Protection of the Designated Use of Amphibians in Non-Fish-Bearing (“Type N”) Streams Through the Midcoast Implementation Ready TMDL (October 5, 2012) *available at* http://www.northwestenvironmentaladvocates.org/nweafiles/2012/12/OR_MidCoast_TMDL_fed_letter_Amphibian_20121003.pdf; and Oregon Coastal Nonpoint Pollution Control Program; Additional Information Concerning Oregon’s Failure to Regulate Agricultural Nonpoint Pollution (May 10, 2013) *available at* <http://northwestenvironmentaladvocates.org/nweafiles/2013/05/CZARA%20Letter%20to%20Federal%20Agencies%20re%20Agriculture%205%202013%20%282%29.pdf>. NWEA has brought information to the attention of elected officials, agency management and staff, and other public servants through dissemination of these letters.

Likewise, based on the documents previously disclosed by NOAA and EPA in response to NWEA’s FOIA request, NWEA petitioned the Oregon Environmental Quality Commission to adopt rules to address weaknesses in its coastal nonpoint program. *See* Petition to Initiate Rulemaking and Take Other Actions to Protect Existing and Designated Uses of Fish and Wildlife From Point and Nonpoint Sources of Pollution, *available at* http://www.northwestenvironmentaladvocates.org/nweafiles/Pesticide%20Petition%20FINAL_20120809.pdf. Moreover, by bringing weaknesses to the attention of EPA and NOAA that were revealed in the previously-released documents, NWEA was able to convince EPA and NOAA to change its position and include pesticides as an open issue in Oregon’s program. *See* Letter from Dick Pedersen, Director, Oregon Department of Environmental Quality and Jim Rue, Director, Oregon Department of Land Conservation and Development to Dan Opalski, EPA, and Margaret Davidson, NOAA, July 1, 2013 *available at* <http://www.deq.state.or.us/wq/tmdls/docs/midcoast/CZARAsignedletter.pdf> (in which reference is made to a May 29, 2013 email from Christine Psyk, EPA, to Greg Aldrich, Oregon DEQ, noting that Oregon must “ensure the adequacy of stream buffers for the application of certain chemicals.”)

NWEA filed extensive comments on the proposed finding that Oregon has not submitted an approvable program. *See* <http://northwestenvironmentaladvocates.org/blog/wp-content/uploads/>

2014/03/NWEA-Comments-on-Oregons-CNPCP-51.pdf. NWEA also used materials obtained through previous FOIA requests to provide a variety of fact sheets to the public. *See e.g.*, <http://northwestenvironmentaladvocates.org/blog/wp-content/uploads/2014/01/How-to-Comment-on-CZARA-4-pages1.pdf>; <http://northwestenvironmentaladvocates.org/blog/wp-content/uploads/2014/01/How-to-Comment-on-CZARA-Pesticides1.pdf>.

NWEA intends to publicize some of the disclosed information through its continued work with state and federal agencies and with other organizations doing similar work. NWEA regularly participates in public processes involving environmental issues, such as rulemaking for Oregon's deficient forest practices before the Oregon Board of Forestry, and expects to use disclosed information to educate agency officials, elected officials, reporters, and others about the water quality and environmental impacts associated with the coastal nonpoint pollution control plan in Oregon. NWEA also fully intends to communicate disclosed information to its friends in the non-profit community and doing so will enhance the level of public understanding about the relevant government operations. Indeed, NWEA is viewed as the primary source of information concerning the CZARA program in Oregon. Having the documents will assist NWEA in helping that portion of the general public that is concerned about nonpoint source pollution in the state's coastal watersheds— whether logging, farming, or pesticide spraying— to continue to participate in the process of Oregon's achieving a fully approvable coastal nonpoint program. For these reasons, disclosing the requested documents will significantly further public understanding of NOAA's regulatory activities by helping inform a reasonably broad audience of interested persons.

Finally, disclosure is not primarily in the commercial interest of NWEA. *See* 15 C.F.R. § 4.11(l)(ii). As a non-profit organization, NWEA has no commercial interest that could be furthered by disclosure. NWEA does not intend to sell the requested documents once obtained, nor does NWEA expect to disseminate the information in any way that would directly generate funds for NWEA. Instead, NWEA seeks the information to help educate the public and interested non-profit organizations.

Accordingly, please waive all fees associated with the search, review, and production of documents and information responsive to this request.

Conclusion

Please contact me if you have any questions about this request, particularly about the scope or identity of the documents requested.

Sincerely,

A handwritten signature in black ink, appearing to read "Nina Bell", with a stylized, flowing script.

Nina Bell
Executive Director